

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In Re Paul Wojciechowski)
) 16-42442
and) Ch 13
Mary Wojciechowski) October 13 2016
)
Debtors)

Creditor Susan Mello's Supplemental Objection Verification and Exhibit and Request for judicial notice¹

Comes now Creditor Susan H Mello and Susan H Mello LLC and as supplemental exhibit and requests judicial notice as follows :

1 Submits a copy of pages of his May 2015 deposition where he testified from April 2013 to May 2015 had rental income of \$850/mo as well as full contribution for all utilities , which was not shown on the 2013, 2014 and 2015 tax returns and asks the court to take judicial notice under the IRC all income included rental income is to be reported and would be done on a Sch E and was not done by Debtors.

2 Submits a second copy from page of his deposition where he stated his clothes were \$50/mo (when the household income was the \$19xx/Mo VA income and Mary's \$39,000/year) ; that

¹ This is especially so where yesterday began losing her voice

his food was \$50/mo and there were no school and books for the children, the figure there was the added cost to have the children on Mary's insurance since he gets his medical care at the VA.(Which was corrected to note had had counselling expenses that has ended as of the May 2015 deposition) and which shows the Matrix debt still listed was \$300 and would have been paid at \$60/mo , and the Form 14 from 2012 as well as the page from 2012 judgment on whether the credit cards should have been listed as a possible DSO . The undersigned also included a copy of his sworn 2007 statements where on the same house 2or more full time children (Including with laundry for them) the claimed utilities were about half of what claimed now , even where the utility rates have gone up only about 10-15%.

3 Verifies the above copies and statements in the Objection to the September schedules and the 2 Motions to Dismiss as true and correct .

4. Requests the court take judicial notice the Missouri Dept of Economic Development has found the cost of living is 89.9% of the averages

https://www.missourieconomy.org/indicators/cost_of_living/

and of US ADA food cost budget figures at

<https://www.cnpp.usda.gov/sites/default/files/CostofFoodAug2016.pdf>

and submits the claim of \$1000/mo for food is unreasonable and likely again falsely included the daughter who does not visit and the so s at full time even where show child support which already includes payment for their food.

Under the Robinson formula where as in the 2015 decree of the 42 meals in a week , the 2 younger boys are generally the first week , for dinner Thursday and breakfast on Friday and

then the next week are with debtor Thursday for dinner, 3 meals each on Friday, Saturday and Sunday and Monday am ,(11 meals) a total of 12 of 42 meals .(Less than y 1/3) and where the older boy has one more meal a total of 13 of 42 meals , the reasonable food costs for them would be

USDA 1/3 of the \$205 USDA rate \$68

1/3 of the \$191 USDA rate \$63

14/42ths of \$ 237 USDA rate est \$80 Subtotal \$211

The actual reasonable totals are then

male debtor \$ 238

female \$206

Boys \$211

Subtotal \$ 655

which for Missouri should be at 89% of est \$590,

This is another \$410/mo overstatement over the claimed \$1000/moin the schedules which would be \$4920 a year and over 6 years of the plan would be close to \$30,000

This is even more so where they included other excessive amounts of household goods.

This all , for a man who when the income was the VA income and Mary's Express Scripts income of est \$6000/mo listed his November 2014 own food expenses as \$ 50/mo .

5 Requests to the extent Counsel seeks to be again be disruptive and make the odd claims she did about privilege to incorporate the reply from the adversary case on attorney client privilege and submits :

It is noted

RULE 4-1.6: CONFIDENTIALITY OF INFORMATION

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(3) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

As Judge Flessig held in Kohn v Komen, _ Fed Supp_ (ED Mo 2016)

July 5, 2016. Federal courts have recognized a self-defense exception to the attorney-client privilege in cases involving federal claims and pendent state law claims. Although the exception usually arises in the context of disputes between the attorney and the client, it has also been applied in suits by third parties alleging that an attorney engaged in misconduct in representing a client. See First Fed. Sav. & Loan Ass'n of Pittsburgh v. Oppenheim, Appel, Dixon & Co., 110 F.R.D. 557, 565-66 (S.D.N.Y. 1986). Additionally, Missouri Rule of Professional Conduct 4-1.6(b) provides that "[a] lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary . . . to establish a defense to a . . . civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client." Mo. Rules of Prof'l Conduct r. 4-1.6(b); see also id. cmt. 8 ("Where a legal claim . . . alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client.").

See also WAITE, SCHNEIDER, BAYLESS & CHESLEY CO. L.P.A., vDavis _- Fed Supp_ (DC SD OH 2012) - Case No. 1:11-cv-0851:

At common-law, "[a]n exception to the attorney-client privilege permits an attorney to reveal otherwise protected confidences when necessary to protect his own interest." Levine, Self-Interest or Self-Defense: Lawyer Disregard of the Attorney-Client Privilege for Profit and Protection (1977), 5 Hofstra L. Rev. 783. This exception provides that "when an attorney becomes involved in a legal controversy with a client or former client, the attorney may reveal any confidences necessary to defend himself or herself or to vindicate his or her rights with regard to the disputed issues." 1 Stone & Taylor, Testimonial Privileges (2d Ed. 1995) 1-177, Section 1.66. See also Mitchell v. Bromberger (1866), 2 Nev. 345; 1 McCormick on Evidence (6th Ed.2006) 414, Section 91.1.

...

..r, "the attorney-client privilege exists to aid in the administration of justice and must yield in circumstances where justice so requires," Moskowitz v. Mt. Sinai Med. Ctr., 69 Ohio St.3d [638], at 661, 635 N.E.2d 331 [(1994)]. The same considerations of justice and fairness that undergird the attorney client privilege prevent a client from employing it in litigation against a lawyer to the lawyer's disadvantage. Wolfram, Modern Legal Ethics (1986) 308, Section 6.7.8; Wright & Miller, Federal Practice & Procedure (1997, Supp.2010), Section 5503; Restatement (Third) of the * *543 Law Governing Lawyers, Section 83, Comment b.

Thus, courts apply the exception because "[i]t would be a manifest injustice to allow the client to take advantage of [the attorney-client privilege] to the prejudice of his attorney * * * [or] to the extent of depriving the attorney of the means of obtaining or defending his own rights." Mitchell v. Bromberger, 2 Nev. 345; see also Doe v. A Corp. (C.A.5, 1983), 709 F.2d 1043, 1048-1049; Daughtry v. Cobb (1939), 189 Ga. 113, 118, 5 S.E.2d 352; Stern v. Daniel (1907), 47 Wash. 96, 98, 91 P. 552; Koeber v. Somers, 84 N.W. at 995.

end of quote ²

Verification

Susan Mello states the attachments are true copies , the statements above are true and the statements in the pending filed Objection and the 2 Motions to Dismiss are true and correct to the best of my knowledge, information and belief.

Under penalties of perjury

/s/ Susan H Mello 10/12/2016

² The undersigned also notes as well to the extent counsel would make a claim of Mo statute that is limited on who can testify in Missouri courts, and Sappington v Miller case as cited by counsel held the opposite for which she cited it . There a former client tried to stop his former counsel testifying and the court found the self- defense privilege applied even when the controversy (unlike here) ws directed against the lawyer; there is was just whether the client had given the lawyer authority to settle.

Respectfully submitted

BY /s/ Susan H Mello

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Pro se Creditor /Plaintiff and Attorney For

Creditor /Plaintiff Susan H Mello LLC

The undersigned confirms that she eserved a copy on D Daugherty and A Redden-Jansen by e service and understands the Notice of Electronic filing and as such other than what was mailed all necessary parties are served with this documents via the Court's CM/ECF system on the _12_ day of October 2016 /s/ Susan H Mello